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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/812,263	03/29/2004	Melissa Silvestro	EMC-013 (EMC-04-047)	2768
60567	7590	08/07/2006	EXAMINER	
GUERIN & RODRIGUEZ, LLP 5 MT. ROYAL AVE. MARLBORO, MA 01752			AYRES, TIMOTHY MICHAEL	
			ART UNIT	PAPER NUMBER
			3637	

DATE MAILED: 08/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/812,263

Applicant(s)

SILVESTRO ET AL.

Examiner

Timothy M. Ayres

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 11-16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 17-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

This is a first office action on the merits of application SN 10/812,263.

Election/Restrictions

1. Applicant's election without traverse of Invention I, claims 1-10 and 17-20, in the reply filed on 7/21/06 is acknowledged. Claims 11-16 have been withdrawn.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-3, 6-8, 9, 10, and 17-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. Regarding claims 1 and 17, it is unclear whether the tab is projecting from one end of each the first and second elongate rail portions or just one of the first or second elongate portions.

5. Regarding claim 2, it is unclear if the flange is on both ends or just an end of one of the first or second elongate rail portions.

Double Patenting

6. Claims 1-10 and 17-20 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 5-8 of copending Application No. 10/812,262 in view of US Patent 6,021,909 to Tang. Claims 5-8 of

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compending application 10/812,262 teach an adjustable side rail that receives an equipment tray and has flanges/grooves as substantially claimed. The compending application teaches a tab for alignment, but does not claim the tab with a notch and vents in the side rail. Tang teaches a side rail for a cabinet rack that has tabs (32,34) with notches (36) that help align the side rail. Tang also teaches vent openings (30) in the side rail. At the time of the invention it would have been obvious for a person of ordinary skill in the art to modify the side rail of the compending application by adding notches to the tabs and vents to the side rail as taught by Tang to help align and hold the side rail while mounting and the openings provide location for a clamp and other equipment to be mounted.

This is a provisional obviousness-type double patenting rejection.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

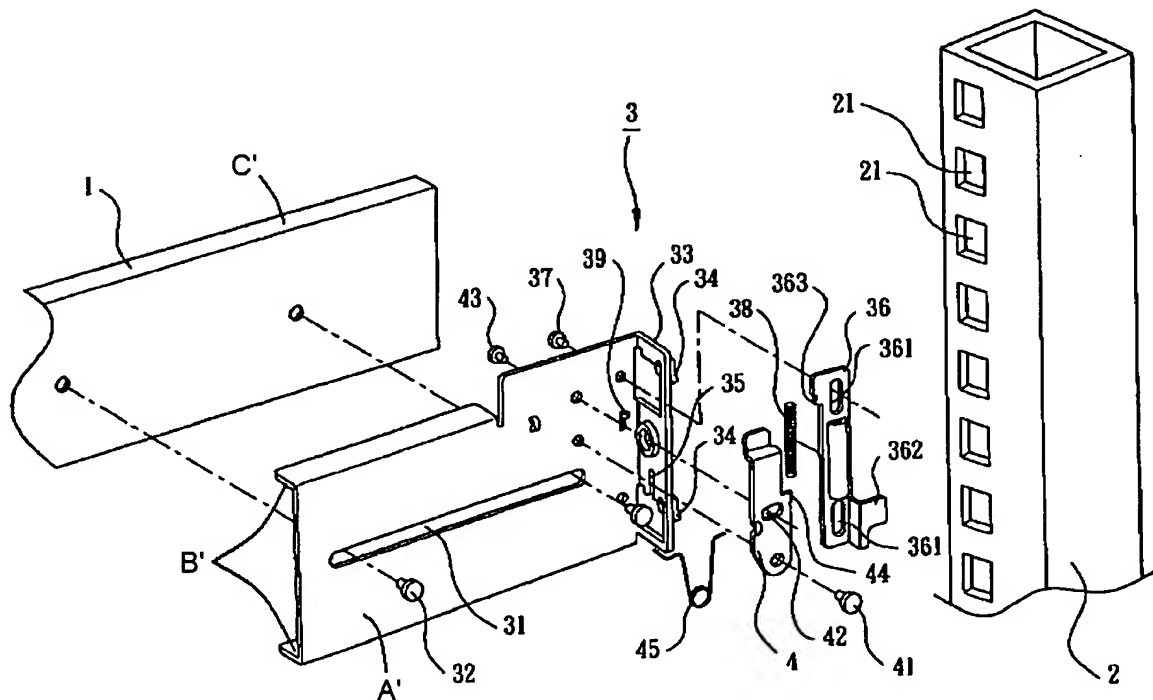
A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. Claims 1, 2, 9, and 17 are rejected under 35 U.S.C. 102(e) as being anticipated by US Patent 6,773,080 to Chen. Chen teaches an adjustable side rail comprising a first elongate rail portion (1) and a second elongate rail portion (3, A') having grooves

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formed from upper and lower lips (B') that receive the edges of the first elongate rail portion as seen in figure 1 below. A tab (34) projects from the end of the second elongate rail portion and as seen in figures 2 and 4, the tab (34) has a notch for catching an edge of a hole (21) in a mounting rail (2). A flange (33) extends from the second rail portion. The first elongate rail portion (1) has grooves formed from upper and lower lips (C').



Chen '080 Figure 1

9. Claims 1-4 rejected under 35 U.S.C. 102(e) as being anticipated by US Patent 6,893,091 to Fenner. Fenner teaches a side rail (62) as seen in figure 8. The side rail comprises a first rail portion (68) and a second rail portion (106) with lips defining grooves to receive the first rail portion. A tab (88) extends from a flange on the first side

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rail portion. The tab (88) has the corners notched out making the tab (88) have a smaller height than the flange. Vent openings (92) are in the side rail.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

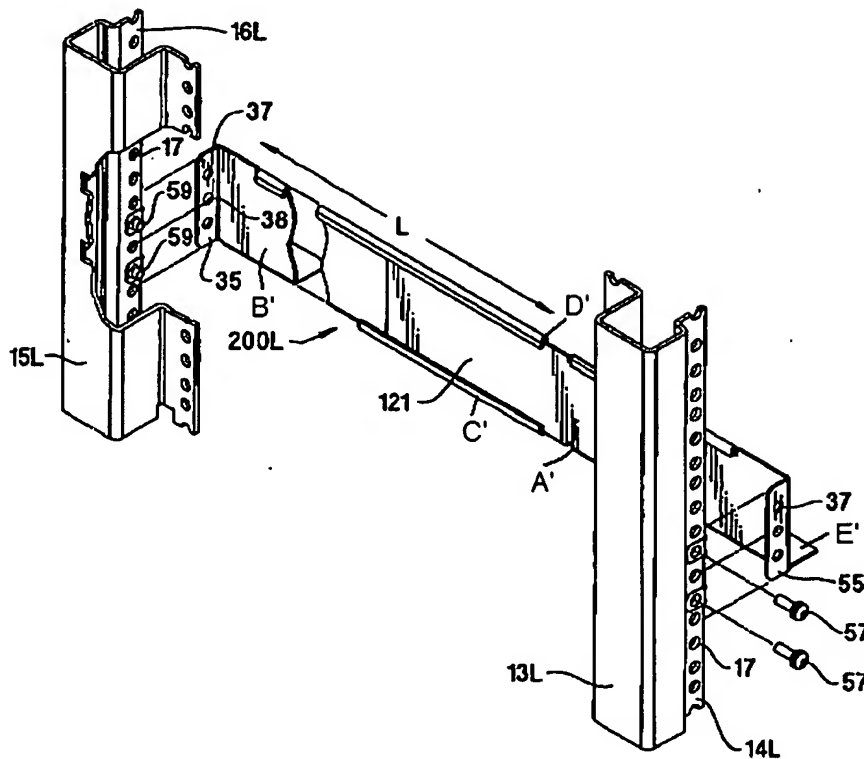
11. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

12. Claims 1-10 and 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent Publication 2001/0040142 to Haney in view of US Patent 6,021,909 to Tang. Haney teaches in figures 6 and 7 an adjustable side rail (121) with a first elongate rail portion (A') and a second elongate rail portion (B') that has grooves (D', C') extending outwardly to receive the edges of the first elongate rail portion (A'). Flanges (35, 55) have holes (37) to mount the side rail (121) to the mounting rail (14L, 16L). A shelf portion (E') extends inwardly to receive an equipment tray. Alignment tabs (38) help align the side rail. Haney does not expressly disclose a tab with a notch, a

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forward facing tab for limiting an extent of rearward placement of the equipment unit, and a plurality of vent openings in the side rail. Tang teaches a side rail (12) with a shelf portion (14) and a plurality of openings (30). The side rail (12) comprises flanges (42) at both ends and also both ends have first and second tabs (32,34) that have notches (36). A clamping unit (62) has a forward facing tab (82) and is clamped to the side rail for limiting the rearward extent of the equipment unit (84). The equipment unit/tray (84) has an equipment rail that cooperates with the shelf portion to slide the unit/tray in and out of the rack. At the time of the invention it would have been obvious for a person of ordinary skill in the art to modify Haney by adding the tabs with notches, vent openings, and clamping unit with the tab as taught by Tang to help hold the tab to the mounting rail while keeping the side rail in alignment allowing the side rail to be attached and to have openings to allow the clamp unit to be attached, thereby preventing rearward movement of the equipment tray.

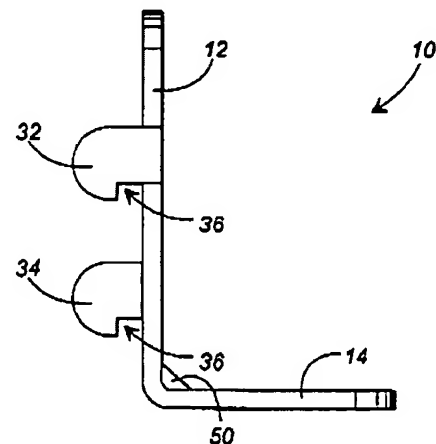
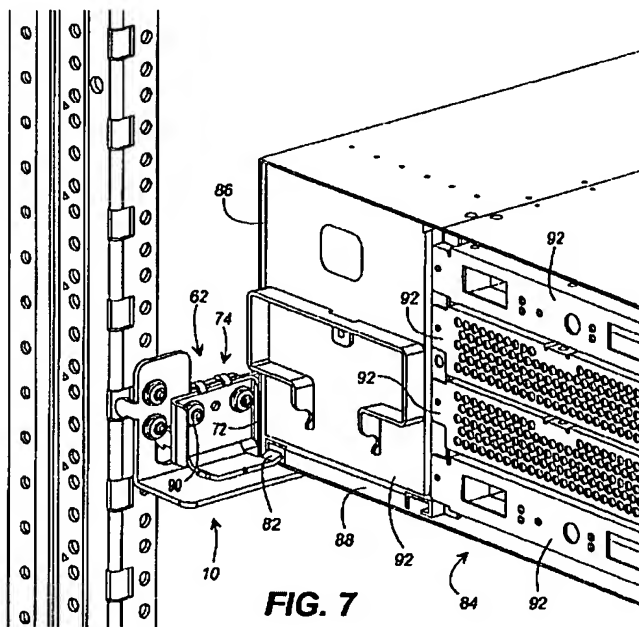


Haney '142 Figure 6

13. Claims 1-10 and 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 6,021,909 to Tang in view of US Patent Publication 2001/0040142 to Haney. Tang teaches a side rail (12) with a shelf portion (14) and a plurality of openings (30). The side rail (12) comprises flanges (42) at both ends and also both ends have first and second tabs (32,34) that have notches (36). A clamping unit (62) has a forward facing tab (82) and is clamped to the side rail for limiting the rearward extent of the equipment unit (84). The equipment unit/tray (84) has an equipment rail that cooperates with the shelf portion to slide the unit/tray in and out of the rack. Tang does not expressly disclose the side rail with a first and second elongate

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portions. Haney teaches in figures 6 and 7 an adjustable side rail (121) with a first elongate rail portion (A') and a second elongate rail portion (B') that has grooves (D', C') extending outwardly to receive the edges of the first elongate rail portion (A'). Flanges (35, 55) have holes (37) to mount the side rail (121) to the mounting rail (14L, 16L). A shelf portion (E') extends inwardly to receive an equipment tray. Alignment tabs (38) help align the side rail. At the time of the invention it would have been obvious for a person of ordinary skill in the art to modify the side rail of Tang by making it with a first and second elegant rail portions as taught by Haney to allow the side rail to be adjusted to different sized racks.



Tang '909 Figures 7 and 3

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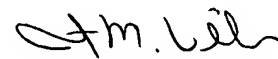
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy M. Ayres whose telephone number is (571) 272-8299. The examiner can normally be reached on MON-THU 8:00 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

TMA
7/31/06



JANET M. WILKENS
PRIMARY EXAMINER
A 3637